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*Co-Lead Counsel for Defendant Trans Union, LLC  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
HELENA DIVISION**

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HERU SPENCER,

Plaintiff,

vs.

EXPERIAN; EQUIFAX INC;  
RELX INC.; TRANSUNION  
HOLDING COMPANY INC.;

Defendants.

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Case No. 6:23-cv-00065-BMM-KLD

**TRANS UNION, LLC'S NOTICE  
OF PLAINTIFF'S NON-  
OPPOSITION TO TRANS  
UNION'S MOTION TO DISMISS**

Defendant consumer reporting agency Trans Union, LLC (“Trans Union”), by counsel, hereby submits this Notice Of Plaintiff’s Non-Opposition to Trans Union’s Motion To Dismiss [Doc. No. 13] (the “Motion”).

The Motion should be granted as unopposed in this case where pro se Plaintiff falsely claims that Trans Union violated the Fair Credit Reporting Act, the Fair Debt Collection Practices Act and additional unidentified “multiple statutes” by reporting some unidentified “incorrect information” on their consumer report without their “written or verbal consent.”

## **I. RELEVANT PROCEDURAL HISTORY**

On August 31, 2023, *pro se* Plaintiff Heru Spencer served Trans Union with their Complaint in Montana’s 18<sup>th</sup> Judicial District Court of Gallatin County. On September 19, 2023, Trans Union removed the matter to this Court. On September 26, 2023, Trans Union filed its Motion, arguing that dismissal is appropriate because, *inter alia*, Plaintiff fails to allege any required inaccuracy in Trans Union’s reporting and case law holds that an inaccuracy must be alleged for a claim under the FCRA and because case law holds that Trans Union is not required to obtain Plaintiff’s consent or permission before preparing a consumer report for a third-party. See generally Motion. Copies of the Motion and Memorandum were served on Plaintiff at the address listed for Plaintiff on the docket. See id.

Plaintiff's deadline to respond to the Motion was October 17, 2023. To date, Plaintiff has not addressed their failure to respond to the Motion and has still not filed any required opposition.

## **II. ARGUMENT**

Pursuant to Local Rule 7.1, "failure to file a response brief may be deemed an admission that the motion is well taken." See id. Local Rule 7.1(d)(1) mandates that "[r]esponses to motions to dismiss...must be filed within 21 days after the motion was entered in the docket." See id. "Failure to follow a district court's local rules is a proper ground for dismissal." Ghazali v. Moran, 46 F. 3d 52, 53 (9<sup>th</sup> Cir. 1995) (affirming the grant of an unopposed motion to dismiss under local rule by deeming a *pro se* litigant's failure to oppose as consent to granting the motion). Moreover, despite a litigant's pro se status, "[they] are nevertheless 'bound by the rules of procedure' the same as other litigants." Ide v. U.S. I.R.S., 2013 WL 1750534, \*3 (D. MT Apr. 23, 2013) (quoting Ghazali, 46 F.3d at 54).

Plaintiff is an experienced *pro se* litigator. While this is their first suit in this Court, they have litigated at least two known lawsuits in the Western District of Wisconsin as a *pro se* plaintiff, and engaged in motion practice in one of those matters. See generally Spencer, Heru et al v. The Church of Prismatic Light et al, 3:22cv00257(WMC), Pacer, at DNs 19, 23, 26, 34, 36, 41, & 43, (WD Wi. Aug. 18, 2023). While the jurisdiction differs from the present matter, both Courts have local

rules regarding motion practice and time to respond, which Plaintiff has appeared to abide by in the Western District of Wisconsin, indicating that Plaintiff is aware of their rights and responsibilities as a *pro se* litigant engaging in motion practice.

Plaintiff's deadline to respond to the Motion was October 17, 2023. See LR 7.1(d). Plaintiff did not file a response brief, nor did they file a motion to extend their deadline to respond, and the Court has not otherwise issued an order directing Plaintiff to respond at a different time. Despite their *pro se* status, Plaintiff "is bound by the rules of procedure." See Ide, 2013 WL 1750534 at \*3. Plaintiff has failed to abide by the rules of procedure as required by all litigants.

Accordingly, for the reasons set forth in Trans Union's Memorandum In Support of the Motion and because Plaintiff failed to timely respond, Trans Union respectfully requests that the Motion be granted and that Plaintiff's Complaint be dismissed, with prejudice.

Respectfully submitted,

/s/ Emily M. Stultz

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## **CERTIFICATE OF SERVICE**

I hereby certify that on the **26th** day of **October** 2023, a true copy of the foregoing was served:

Via ECF to the following parties:

Michael L. Rausch  
Emily M. McCulloch  
BROWNING, KALECZYC, BERRY & HOVEN, P.C.  
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Via first-class mail to the following parties:

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/s/ Emily M. Stultz

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